TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 928.

THEODORE LAMBERT, APPELLANT,

vs.

GEORGE BARRETT, SHERIFF OF THE COUNTY OF CAMDEN, IN THE STATE OF NEW JERSEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED MARCH 4, 1895.

(15,812.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 21, 1895.

1 In the Circuit Court of the United States, District of New Jersey.

THEODORE LAMBERT, Plaintiff and Appellant, and GEORGE BARRETT, Sheriff, Defendant and Appellee. } Petition and Allowance of Appeal.

The above-named plaintiff, Theodore Lambert, considering himself aggrieved by the judgment entered on this twenty-eighth day of December, A. D. eighteen hundred and ninety-four, in the above-entitled proceedings, doth hereby appeal from said judgment to the Supreme Court of the United States, and he prays that this appeal be allowed and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

JOHN L. SEMPLE,
Attorney for Plaintiff and Appellant.

And now, to wit, on the 2d day of January, A. D. eighteen hundred and ninety-five, this appeal is taken and allowed as prayed for by and in pursuance of the statute in such case made and provided.

GEORGE SHIRAS, Jr.,
Associate Justice of the Supreme Court of the United States.

Endorsed: U. S. circuit court, district of New Jersey. Theodore Lambert, plaintiff & appellant, and George *George* Barrett, sheriff, def't & appellee. Petition and allowance of appeal. John L. Semple, att'y. Filed Jan'y 4, 1895.

2 By the Honorable George Shiras, Jr., justice of the Supreme Court of the United States, to George Barrett, sheriff of the county of Camden, in the State of New Jersey:

Whereas Theodore Lambert has lately appealed to the Supreme Court of the United States from a judgment lately rendered in the circuit court of the United States for the district of New Jersey, made in favor of you, the said George Barrett, sheriff of the county of Camden, in the State of New Jersey; and whereas the said Theodore Lambert is to be executed and hanged on the third day of January next by virtue of a certain death warrant issued by the Honorable George T. Werts, governor of the State of New Jersey, to the said George Barrett, sheriff as aforesaid, you are therefore hereby cited to appear before the Supreme Court of the United States, at the city of Washington, on the 4th day of March next, to do and receive what may appertain to justice to be done in the premises.

And it is further ordered that the execution of the said
2½ Theodore Lambert be, and the same is hereby, stayed until the further order of the court.

Given under my hand, at the city of Washington, in the *city* of *Washington*, the 2d day of January, in the year of our Lord one thousand eight hundred and ninety-five.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] United States Supreme Court. Theodore Lambert, appellant, and George Barrett, sheriff, appellee. Citation. John L. Semple, att'y. Service of a copy of the within citation is hereby acknowledged this third day of January, A. D. 1895. George Barrett, sheriff. Filed Jan. 15, 1895. ——— ———, clerk.

3 In the Supreme Court of the United States, October Term, in the Year of our Lord One Thousand Eight Hundred and Ninety-four.

THEODORE LAMBERT, Pl'tiff and Appellant, and GEORGE BARRETT, Sheriff, Def't and Appellee. } Assignment of Errors.

Afterwards, to wit, on the twenty-eighth day of December, A. D. eighteen hundred and ninety-four, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in Washington, District of Columbia, comes the said Theodore Lambert, by his attorney, John L. Semple, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, in refusing to issue the writ of *habeas corpus* as prayed for.

Whereas by the law of the land the judgment ought to have been given for the plaintiff against the said defendant, and that the said plaintiff prays the judgment aforesaid may be reversed, annulled, an- altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment.

JOHN L. SEMPLE,
Attorney for the Plaintiff in Error.

Endorsed: United States circuit court, district of New Jersey. Theodore Lambert, pl'tiff and appellant, and George Barrett, sheriff, def't and appellee. Assignment of errors. John L. Semple, att'y. Filed Jan. 4, 1895.

4 To the honorable the judges of the circuit court of the United States of America:

Your petitioner, Theodore Lambert, a citizen of the United States, being a citizen of the State of New Jersey and of the county of Camden, in said State, respectfully shows that he is restrained of his liberty by confinement in the county jail, situate at Camden, in said county, by George Barrett, sheriff of said county and keeper of said county jail; that the cause or pretense of such restraint and confinement is a certain reprieve granted by the Honorable George T. Werts, governor of said State, on the fourth day of December

last past, a copy of *of* which is hereunto annexed and made a part of this petition, whereby the execution of a certain judgment of the court of over and terminer and general jail delivery of the county aforesaid, entered on the thirteenth day of October last past, was suspended until the third day of January next.

And your petitioner further shows that on the fifteenth day of June last past he was convicted of the murder of William Kairer in the court of over and terminer and general jail delivery of the county of Camden aforesaid: that on the thirteenth day of October last the judgment of the court was pronounced upon your petitioner, by which it was ordered that your petitioner should be taken to the county jail and there safely kept until the thirteenth day of December instant, when he was to be hanged by the neck until his body was dead.

And your petitioner further shows that afterwards, to wit, on the nineteenth day of November last past, application was made
5 to the Honorable Alexander T. McGill, chancellor of the State of New Jersey, for a writ of error to remove the judgment aforesaid and the proceedings therein to the supreme court of New Jersey, and that the same was denied.

And your petitioner further shows that on the fourth day of December instant application was made to the Honorable George T. Werts, governor as aforesaid, for a reprieve to suspend the execution of the judgment so as aforesaid given against your petitioner, which was made and granted on the day last above mentioned, and thereby suspending the execution of the mandate of said court of over and terminer and general jail delivery until the third day of January next.

And your petitioner further shows that on the twenty-second day of December instant the said George T. Werts, governor as aforesaid, issued a certain death warrant, a copy of which is hereto annexed, to the said George Barrett, sheriff as aforesaid, wherein and whereby the said George Barrett, sheriff as aforesaid, was commanded to execute your petitioner on the third day of January next.

And your petitioner further shows that there is no other cause for the detention pretended, to the best of his knowledge or belief.

And your petitioner further shows that his imprisonment is illegal, for that the said the Honorable George T. Werts, governor as aforesaid, had no jurisdiction, warrant, or authority under the laws and constitution of said State to grant said reprieve.

And your petitioner further shows that the day and time
6 having passed for the execution of the aforesaid judgment and sentence of said court of over and terminer and general jail delivery, it is supposed to have been done in law, and if not, then said judgment and execution is *nil*, illegal, and cannot now be lawfully carried into effect.

And your petitioner further shows that by the judgment and sentence of said court as aforesaid your petitioner has been and is now under sentence of death and illegally and unlawfully restrained of his liberty and detained in said jail in violation of the Constitu-

tion of the United States and in violation of the constitution and laws of the State of New Jersey.

Article five, section nine, of the constitution of the State of New Jersey provides:

"The governor or person administering the government shall have power to suspend the collection of fines and forfeitures and to grant reprieves, to extend until the expiration of a time not exceeding ninety days after conviction, but this power shall not extend to cases of impeachment."

And your petitioner further shows that the said George T. Werts, governor as aforesaid, had no prerogative, right, or authority under and by virtue of the constitution and laws of the State of New Jersey to grant said reprieve or issue said death warrant as aforesaid; and the same is illegal and unlawful; all of which is in violation of the laws and Constitution of the United States and the State of New Jersey.

And your petitioner further shows that by virtue of said death warrant *that* the said George Barrett, sheriff as aforesaid, intends to hang and execute your petitioner on the third day of January next.

And your petitioner further shows that on the twenty-second day of December instant application was made by your petitioner to the Honorable Charles G. Garrison, one of the justices of the supreme court of judicature of the State of New Jersey, for a writ of *habeas corpus* to be relieved of the unlawful restraint of his liberty and confinement in said county jail, and that the same was denied and your petitioner was refused an appeal from the same, all of which is contrary to and in violation of the Constitution and laws of the United States and the State of New Jersey.

And your petitioner further shows that on the twenty-fourth day of December instant application was made to the Honorable Mercer Beasley, chief justice of the said supreme court of judicature of the State of New Jersey, for a writ of certiorari to review said death warrant so as aforesaid issued by the said George T. Werts, governor as aforesaid, and that the same was refused and an appeal from said refusal and a hearing therein was thereupon denied your petitioner, all of which is contrary to and in violation of the laws and Constitution of the United States and the State of New Jersey.

And your petitioner further shows that by the actions of said justices of the said supreme court of judicature of the State of New Jersey in refusing him relief in the premises he has been deprived of all the just rights of a citizen of the United States and of the protection of its laws, and in like manner deprived of his liberty and is about to be deprived of his life.

Therefore your petitioner prays that he may be forthwith brought before this court by virtue of a writ of *habeas corpus* to be issued pursuant to the statute in such case made and provided, to be directed to the said George Barrett, sheriff as aforesaid, that your petitioner may be discharged out of custody.

And your petitioner will ever pray, &c.

The petitioner above named, being duly sworn according to law, upon his oath saith that the allegations contained in the foregoing petition are true.

THEODORE LAMBERT.

Sworn and subscribed this 26th day of December, A. D. 1894, before me—

WM. S. HOFFMAN,
Master in Chancery.

The foregoing petition being presented at chambers, in the city of Philadelphia, State of Pennsylvania, upon December 28th, 1894, the prayer thereof is, upon consideration of the said petition and the matters therein set forth, refused.

GEO. M. DALLAS, *Cir. J.*

9 (*Copy of Reprieve.*)

STATE OF NEW JERSEY.

(Vignette.)

George T. Werts, gove-nor of the State of New Jersey, to our sheriff of our county of Camden, Greeting:

Know ye that, for divers reasons me thereunto moving, I have granted and do hereby grant a reprieve to Theodore Lambert, now under sentence of death by reason of a conviction of murder of the first degree, heretofore had in the court of over and terminer and general jail delivery in and for the said county of Camden, and I do hereby order and direct that you suspend the execution of the said sentence of death upon the said Theodore Lambert until Thursday, the third day of January, one thousand eight hundred and ninety-five, or until you are thereunto commanded by my warrant directed and delivered to you according to law.

Hereof fail not.

Given under my hand and the great seal of this State of [SEAL.] New Jersey, at Trenton, this fourth day of December, A. D. 1894.

GEORGE T. WERTS.

By the gove-nor:
A. H. RICKEY,
Assistant Secretary of State.

10 (*Copy of Death Warrant.*)

STATE OF NEW JERSEY.

(Vignette.)

George T. Werts, gove-nor of the State of New Jersey, to our sheriff of our county of Camden, Greeting:

Know you that, by virtue of the authority vested in me by law, I do hereby command you that upon Theodore Lambert, heretofore con-

victed in your said county of murder of the first degree and by the judgment of the court of oyer and terminer and general jail delivery of said county sentenced to be hanged by the neck until dead, and who, by an order of the fourth day of December, A. D. eighteen hundred and ninety-four, to you directed and delivered, was duly reprieved and the said sentence against him suspended until Thursday, the third day of January, eighteen hundred and ninety-five, or until you were further directed by me, you do proceed on the said third day of January, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the said third day of January, according to law, to execute the sentence of the said court upon the said Theodore Lambert by hanging him by the neck until he is dead.

Hereof fail not; and for so doing this shall be your sufficient warrant.

Given under my hand and the great seal of the State
11 [L. S.] of New Jersey, at Trenton, this twentieth day of December, A. D. eighteen hundred and ninety-four.

GEORGE T. WERTS, *Governor.*

By the governor:

HENRY C. KELSEY,
Secretary of State.

Endorsed: United States circuit court, district of New Jersey. United States of America. Theodore Lambert, petitioner, *vs.* George Barrett, sheriff. On petition for writ of *habeas corpus* and order refusing petition. John L. Semple, counsellor-at-law. Filed January 4, 1895.

12 UNITED STATES OF AMERICA, } ss.:
District of New Jersey, }

I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, do hereby certify that the foregoing is a full, true, and complete transcript of the record in the cause of Theodore Lambert against George Barrett, sheriff, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Trenton, in said district, this thirty-first day of January, A. D. 1895.

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

S. D. OLIPHANT, *Clerk.*

Endorsed on cover: Case No. 15,812. New Jersey C. C. U. S. Term No., 928. Theodore Lambert, appellant, *vs.* George Barrett, sheriff of the county of Camden, in the State of New Jersey. Filed March 4, 1895.

Office Supreme Court, U. S.
FILED.
MAR 21 1895
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1894

TERM NO., 928.

THEODORE LAMBERT, *Appellant*,

and

GEORGE BARRETT, SHERIFF OF CAMDEN COUNTY, NEW JERSEY, *Appellee*.

APPEAL FRO[illegible] THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

BRIEF OF

JOHN L. SEMPLE,

Attorney and Counsel for Appellant.

Supreme Court of United States.

THEODORE LAMBERT,
Appellant,
and
GEORGE BARRETT, Sheriff of Camden County, New Jersey, *Appellee.*

STATEMENT.

Theodore Lambert, the appellant, a citizen of the United States and of the county of Camden, in the State of New Jersey, was convicted of the murder of William Kairer in the Camden County Court of Oyer and Terminer and General Jail Delivery, by the verdict of a jury on June 15th, 1894; sentence of death was imposed October 13th, 1894, to be executed December 13th, 1894. That on the fourth of December the Governor of the State of New Jersey granted a reprieve suspending the execution of said sentence until January 3d, 1895. That on December 22d, 1894, a certain death warrant was issued by the Governor, commanding the appellee to execute the said appellant on January 3d, then next, (see copies of reprieve and death warrant in printed record). That on December 22d, 1894, application was made to Hon. Charles G. Garrison, one of the Justices of the Supreme Court of New

Jersey, at chambers, for a writ of *habeas corpus*, alleging the unlawful restraint of appellant's liberty in violation of the Constitution of the State of New Jersey and the Constitution of the United States, which application was simply denied, the said Justice refusing to make any order denying the same, or to make up any record in the case that might be made available on appeal. On December 24th, 1894, a further application was made to the Chief Justice of the Supreme Court of New Jersey, at chambers, for a writ of *certiorari* to review the death warrant and bring up the proceedings, in order that the appellant might have a hearing in the Supreme Court of the State. This application was likewise denied, and as a last resort the appellant was compelled to go to the United States Circuit Court for that relief which was denied him by the Judges of his own State (the Supreme Court, being the only court having jurisdiction in such a case, not being in session at the time of said application, and relief perforce had to be sought of the Judges at chambers).

On December 29th, 1894, application was made to the Circuit Court of the United States for the District of New Jersey, for a writ of *habeas corpus*, which was refused by Mr. Justice Dallas, and on January 2d, 1895, an appeal was taken to this Court.

ARGUMENT.

It is admitted that this case comes up on an appeal from a judge and not from the Circuit Court, as it would seem is required upon the authority of Casper *vs.* Fitzgerald, 121 U. S., 87; but as the case involves human life, it is submitted in the hope that in an examination of it the Court may find some ground on which to assume jurisdiction.

The injustice of such a law is manifest in the present case; no court was open, nor could any Circuit Judge be prevailed upon to hold court in the limited time which was had to seek relief, and the order of Mr. Justice Dallas as a judge and the

appeal therefrom were taken in the emergency, the appeal being very kindly allowed by Mr. Justice Shiras.

As to the other question of jurisdiction, I submit, the only remedy or relief to be had by the appellant was by writ of *habeas corpus* to the United States Circuit Court.

Section 753 of the Revised Statutes of the United States provides that the writ of *habeas corpus* shall in no case extend to a prisoner in jail, *unless where he is in custody in violation of the Constitution,* or of a law or treaty of the United States.

In this case the appellant is in custody in violation of the fourteenth amendment to the Constitution of the United States, which declares that no State "shall deprive any person of life, liberty or property *without due process of law.*"

The single question, then, is whether appellant is held in custody in violation of this amendment, in that the State thereby deprives him of his liberty without due process of law.

"Due process of law is process due according to the law of the land. This process in the States is regulated by the law of the State."

Walker *vs.* Sauvinet, 9 D. U. S., 90.

In the case of Barbier *vs.* Connelly, 113 U. S., 29, the following language is used: "The fourteenth amendment, in declaring that no State shall deprive any person of life, liberty or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; *that they should have access to the courts of the country* for the protection of their person and property, the prevention and redress of wrongs; . . . . . that in the administration of criminal justice no different or higher punishment shall be imposed upon one than such as is prescribed to all for like offences."

It is contended that access to the courts of his State was denied appellant, inasmuch as he was dismissed by Judges at chambers, thereby refusing him a decision by a court as to whether he was restrained of his liberty without due process of law.

Appellant availed himself of every opportunity in the law to have his case heard and decided by a court of his own State, but this was denied him, and he had no remedy except to apply for relief to the United States Court by virtue of a writ of *habeas corpus*.

The Circuit Court of the United States has jurisdiction, either in advance or after a State court has finally acted upon a case, summarily to determine whether the appellant is restrained of his liberty in violation of the Constitution of the United States.

"That the petitioner is held under the authority of a State court cannot affect the question of the power or jurisdiction of the Circuit Court to inquire into the cause of his commitment, and to discharge him if he be restrained of his liberty in violation of the Constitution."

Ex parte Royall, 117 U. S., 249.

Ex parte Terry, 128 U. S., 301.

The same authority, on page 251, holds that "The question as to the violation of the Constitution, it is admitted, is one upon which it is competent for the State court to pass. But the Circuit Court has the power to wrest the petitioner from the custody of the State officers in advance of his trial in the State court, if he is restrained of his liberty in violation of the national Constitution. . . . The injunction to hear the case summarily, and thereupon to dispose of the party as law and justice require, does not deprive the court of discretion as to the time and mode in which it will exercise the powers conferred upon it."

I therefore submit that whether the summary decision of Mr. Chief Justice Beasley and Mr. Justice Garrison can in any way be construed as the decision of the Supreme Court of New

Jersey, this court has conclusive jurisdiction of the case, as a Federal question is involved.

Article five, section nine, of the Constitution of the State of New Jersey, provides:

"The Governor or person administering the government, shall have power to suspend the collection of fines and forfeitures, and to grant *reprieves* to extend until the expiration of a time not exceeding *ninety days after conviction*; but this power shall not extend to cases of impeachment."

The constitutionality of the above section is not questioned, but the right of the Governor is assailed, and it is contended that he exceeded his prerogative in granting a reprieve after more than ninety days had elapsed after the conviction,—the verdict of the jury.

The verdict of the jury was returned June 15th, 1894, the reprieve was granted by the Governor, December 4th, 1894, nearly five months afterwards. So that the holding of appellant in custody by virtue of the process from the Executive power,—the reprieve, after December 13th last (the time fixed for the execution of the judgment of the Court of Oyer and Terminer), is not only a violation of the State Constitution, but is repugnant to the Fourteenth Amendment to the Constitution of the United States, inasmuch as it is not due process of law.

The question, therefore, involves the construction of Article five, section nine, of the State Constitution, above quoted. This turns upon the sense in which the word "conviction" is used therein.

The question is, do the words "*after conviction*," used in the Constitution, mean after conviction by verdict, or after conviction by verdict and the judgment of the Court.

The common acceptation of the term, as it is ordinarily used, denotes the verdict of the jury,—the establishment of the guilt of the prisoner, guilty or not guilty, they convicted him, are frequent and common expressions.

This section of the Constitution in question was first put in the Constitution of 1844. The older Constitution of 1776 did not contain it. So, in order to ascertain the intent and signification of the word "*conviction*," recourse must be had to its use and acceptation at the time, and previous to the adoption of the Constitution of 1844.

"If the jury find a prisoner guilty he is then said to be convicted, which conviction may accrue in two ways, either by his confessing the offence and pleading guilty, or by being found so by the verdict of his country."

"After trial and conviction, the judgment of the court regularly follows, unless suspended or arrested by some intervening circumstance."

4 Blk. Com., § 362, 365; also § 375, § 380, 381, 394. Bouvier's Law Dictionary, *verbum* conviction. Blount's Law Dict., anno 1670, *verbum* "convict." Dane's Abrdg., vol. 6, p. 534; vol. 7, p. 338.

"Ordinarily the word 'conviction' signifies the finding of the jury by verdict that the defendant is guilty. It does not mean also that sentence against him has been rendered."

Bishop on Statutory Crimes, § 348.

Bishop on Criminal Law, vol. 1, § 903, § 963.

"Conviction, judgment and sentence are not identical terms, but have quite separate and distinct legal significations."

McNeill's case, 1 Canes (N. Y.) 72.

In the case of United States *vs.* Gilbert, 2 Sumner, 39, 40, Mr. Justice Story uses the following language: "And here, in order to avoid any ambiguity, it may be proper to state that conviction does not mean the judgment passed upon a verdict, but if the jury find him (the party) guilty, he is then said to be convicted."

In the case of *ex parte* Brown, 68 Cal., 176, the words "*conviction*" and "*convicted*" were used in the Constitution and statute of California pretty much as they are used in the

New Jersey Constitution, and the court held that the ordinary meaning of the words was the finding of the jury of a verdict that the accused is guilty.

In the case of the State *vs.* Alexander, 76 N. C., 231, and also reported in 22 Am. Rep., 675, the word "conviction," as used in Article 3, Section 6 of the North Carolina Constitution, and similar in language to the section in question, it was held to denote a verdict rendered by a jury. "And" (quoting the language of the judge) "this brings us to the construction of the Constitution as to what is meant by conviction. Nothing can be a conviction but the verdict of the jury."

The same view is held in the case of United States *vs* Watkins, Vol. 6, Fed. Rep., 152. The word conviction, as used in Article 2, Section 3, of the Oregon Constitution, is construed by the Court to be used in its primary and ordinary sense, and signified a proving or finding that the defendant was guilty, either by the verdict of a jury or his plea to that effect, and did not include the sentence which followed thereon. In this case the judge remarks: "In the argument for the defendant, it has been assumed that conviction of a crime includes and is the result of the judgment or sentence of the court imposing the punishment prescribed therefor. *But this is altogether a mistake.* The term conviction, as its composition (*convinco, convictio*) sufficiently indicates, signifies the act of convicting or overcoming one, and in criminal procedure, the overthrow of the defendant by the establishment of his guilt according to some legal mode. These modes are (1) by the plea of guilty, and (2) by the verdict of a jury."

The above views are maintained, and the question of the construction of this term "conviction," as used in Constitutions, signifying the finding of the jury, is fully and elaborately adjudicated in the case of Blair *vs.* Com. Va., 25 Grattan's Rep., 850.

In the case of Com. *vs.* Lockwood, 109 Mass. 323, Mr. Justice Gray, then sitting in the Supreme Court of Massachusetts, said that, "At the time of the adoption of the Con-

stitution, the word 'conviction' was ordinarily used to express the verdict only, even in creating of the disqualification of the convict as a witness. See page 330.

Upon the above authorities and those to follow, I submit that there is nothing in the subject or the language of the clause of the Constitution under consideration to indicate that the term "*conviction*" is used therein in any other than the ordinary sense,—the verdict of the jury. And that the framers of the Constitution never meant or intended to use the word in any other sense than the one in which it was usually accepted and understood. See additional authorities.

Williams *vs.* U. S., 12 Court of Claims Rep., 195.

Com. *vs.* Richards, 17 Pick (N. Y.), 296.

2 Hawk Pl. Cr., 36, § 1, 10.

Bish. Stat. Crimes, § 348.

Wharten Cr. Pl. and Pr., § 935.

Com. *vs.* Andrews, 2 Mass., 409.

It is contended further that if the interpretation of the term "conviction" is not concluded by repeated and successive adjudications, then the meaning and intent of the word is fixed and settled by the Constitution itself. It is found in Article 1, Sections 10 and 14; Article 5, Sections 9 and 10; Article 6, Section 3, and all through the Crimes Act of the Revised Statutes of New Jersey, and wherever mentioned is capable of no other construction than the one here maintained.

"A reprieve is the withdrawing of judgment or sentence for an interval of time, whereby the execution is suspended. This may be done either before or after judgment."

4 Blk. Com., 394.

1 Chitty Cr. Law, p. 759.

If the prisoner becomes *non compos* after conviction, it is cause for reprieve, and he shall not receive judgment.

1 Chitty Cr. Law, p. 761.

"Reprieve is granted by the pardoning power or by the court who tried the prisoner."

Bouvier Law Dict., *verbum* "Reprieve."

It is therefore contended that a reprieve is nothing more nor less than a suspension of judgment, whether it issues at the hands of the Executive or the Judiciary. If courts suspend judgments, it follows by way of analogy that the Executive may do so, and it was intended to give it this power in the very section of the Constitution now brought in question.

A pardon exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed; while a reprieve exempts him from punishment for a time. It is unquestionably the law, that the pardoning power may intervene after the establishment of guilt of the accused, and before judgment and sentence. If this be so, why will not the same hold good in the matter of a reprieve?—the power in both instances emanating from the same source, and to be exercised alike *after conviction*.

Admitting, however, that the power to reprieve by the Governor cannot be exercised until after judgment or sentence, then I submit that by his action in waiting nearly five months after the conviction of appellant, he has transgressed the measure of the exercise of that power entrusted to him. In other words, if the power is to be exercised at all, it must be done within the prescribed limitation of the Constitution, viz.: "not exceeding ninety days after conviction."

"The sentence in capital cases is usually given immediately after the conviction, and the statute 25 Geo. 2 C. 37, requires the sentence of death to be pronounced in open court immediately after the conviction of murder."

1 Chitty Cr. Law, page 698.

Mr. Justice Dixon, of New Jersey, in the case of the State *vs.* Addy, 14 Vroom 110, evidently had this English statute in view when he said, that "it is always the imperative duty of the Court to render judgment upon a conviction

of crime, unless some legal proceeding for review be interposed."

The framers of the Constitution undoubtedly understood that the sentence immediately followed the conviction when they framed this clause of the Constitution, and with this view the limitation of ninety days in all probability was made.

I respectfully submit that the reprieve and death warrant in this case are a nullity in law, and the holding of the appellant in custody by virtue of the same, is an invasion of his rights, and that it is proposed to take the life of a citizen, without due process of law, is in violation of the Constitution of the United States. That the order of the Circuit Judge in refusing the writ of *habeas corpus* was erroneous, and the appellant ought to be discharged from custody.

JOHN L. SEMPLE,
Attorney and Counsel for Appellant.

Office Supreme Court U. S.
FILED.
MAR 22 1895
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

March Term, 1895.

Term No. 928.

THEODORE LAMBERT,

Appellant,

AGAINST

GEORGE BARRETT, SHERIFF OF CAMDEN COUNTY, NEW JERSEY,

Appellee.

BRIEF.

Appeal from the Circuit Court of the United States for the District of New Jersey.

WILSON H. JENKINS,
Attorney for Appellee,
and Prosecutor of the Pleas.

Supreme Court of the United States

THEODORE LAMBERT,
Appellant,
against
GEORGE BARRETT, Sheriff of Camden County, New Jersey,
Appellee.

BRIEF.

STATEMENT.

Appellant's statement of the case is at fault, where he alleges that on motion for a writ of *habeas corpus*, before Mr. Justice Garrison, he charged that the proceedings had been in violation of the Constitution and laws of the United States. The argument on this motion was addressed solely to the sufficiency of the proceedings under the Constitution and laws of the State of New Jersey. At no time in the State Courts was any question arising under the Constitution and laws of the United States raised. To transfer the case to the Federal Courts was an eleventh hour device. Upon a

writ of error to a State Court, this would be a fatal objection. It is of little importance, however, where review is had by writ of *habeas corpus*.

ARGUMENT.

I

No Federal question is presented in the record, and the appeal should therefore be dismissed for want of jurisdiction.

A reprieve, suspending the execution of the sentence of death, was granted that the appellant might have his case submitted to the Court of Pardons of the State. Then counsel for the appellant faced about and claimed that the Governor had no power to grant this reprieve, and that the appellant must be set at liberty. His contention is this, that the word "conviction," in that clause of the Constitution under which the Governor acted—"The Governor shall have power * * * * "to grant reprieves, to extend until the expiration of a "time not exceeding ninety days after *conviction*"—denotes the verdict of the jury and not the sentence of the Court. The jury returned its verdict June 15th, 1894; sentence was passed October 13th, 1894; a reprieve for thirty days was granted December 4th, 1894. In the one view the Governor's power had expired by December 4th; in the other it was still alive on that day.

The Governor of the State of New Jersey, under an authority conferred upon him by its Constitution, after consulting with the Attorney General of the State as to the extent of his power, granted the reprieve; yet in

so doing he is charged with having violated the Constitution and laws of the United States.

The Honorable Charles G. Garrison, a Justice of the Supreme Court of the State of New Jersey, in the exercise of a discretion vested in him by its laws, on an application for a writ of *habeas corpus*, after hearing all appellant's counsel had to say, held that the Governor had not exceeded his power, that there was no error in the case, and refused the writ. The Revised Statutes of the State of New Jersey, page 468, S. 2, div. III, provide that the following persons shall not be entitled to prosecute the writ of *habeas corpus:* "Persons in "custody or detained for any capital crime, plainly and "specially expressed in the warrant or committment, "unless the court or judge to whom application may "be made, shall, *as an act of discretion*, direct the "writ to issue." Counsel for the appellant dare not charge that Mr. Justice Garrison abused his discretionary power, yet a decision, made in the exercise of this discretion, is charged with being in violation of the Constitution and laws of the United States.

The Honorable Mercer Beasley, Chief Justice of the Supreme Court of New Jersey, likewise in the exercise of a discretion vested in him by the common law of the State, on an application for a writ of certiorari, having heard counsel for the appellant, held that the Governor had not exceeded his power, that there was no error in the case, and refused the writ. A writ of certiorari is not a writ of right, but it rests in the sound discretion of the Court to grant or refuse it under the circumstances of the case—3 Am. and Eng. Enc. of Law, page 62, *et seq.* There is no

charge that this ruling was so unrighteous and unjust that the eminent Chief Justice of the State of New Jersey must have abused the trust reposed in him, yet this ruling, made in the exercise of this discretion, is alleged to be in violation of the Constitution and laws of the United States.

This is all that there is in the apparently serious charges made against the State of New Jersey,—the action of the Governor in granting the reprieve, and the rulings of Mr. Justice Garrison and Mr. Chief Justice Beasley. He dissents from the view they take of the meaning of the word "conviction," and he proposes, if possible, under an alleged denial of access to the courts of the State of New Jersey, to force Mr. Justice Garrison and Mr. Chief Justice Beasley to take the construction of their own State Constitution from the Supreme Court of the United States.

It is obvious that the controversy raises no Federal question. Of what concern is it to the Government of the United States whether the power of the Governor of the State of New Jersey, under its Constitution, to grant a reprieve, begins on one day or another? By virtue of what authority, to be found in the Constitution of the United States, do Mr. Justice Garrison and Mr. Chief Justice Beasley, sitting as Judges under the Constitution of the State of New Jersey, on matters clearly within their jurisdiction, become amenable to Federal control in the exercise of their judicial discretion, in the absence of some specific charge attacking their integrity, fairness or honor? With absolute certainty, which neither argument nor the citation of authorities can render more convincing, these are purely

and exclusively State questions for the appropriate State authorities.

The following citations amply sustain the views here advanced:

"In other words, the learned Court construes the statute (of embezzlement) as covering an embezzlement by an attorney at law. Now while this opinion may, perhaps, be against the weight of authority * * * * * * * still it is a construction placed by the Supreme Court of the State upon a statute of such State, and is as binding upon this Court as if the opinion were pronounced in an ordinary civil suit."—Brown, J.

In Re Converse, 42 Fed., 217.

"But the State can not be deemed guilty of a violation of its obligations under the Constitution of the United States, because of a decision, even if erroneous, of its highest court, while acting within its jurisdiction."

In Re Converse, 137 U. S., 624, page 631.

"And, of course, the decision in the present case of the highest court of the State of New Jersey having jurisdiction, that the statute is constitutional and valid, sufficiently and finally establishes that proposition unless the proceedings in the case did not constitute 'due process of law' within the Fourteenth Amendment to the Constitution of the United States."

Hallinger vs. Davis, 146 U. S., 314.

"What constitutes the commencement of an action "in a State Court, being a matter of State law, the de-

"cision of that court on this point is not a Federal "question, and is not, therefore, reviewable here."

Richmond Mining Co. vs. Rose, 114 U. S., 576, page 583.

"The decision of the State Court sustaining the "validity of the act under the State Constitution is not "re-examinable here." * * * * * "In order to "reverse the judgment of the highest court of the State "of New York, we should be compelled to hold that it "had committed an error so gross as to amount in law "to a denial by the State of due process of law to one "accused of crime or of some right secured to him by "the Constitution of the United States."

In Re Kemmler, 136 U. S. 436, pages 447-49.

"Whether a cross-examination must be confined to "matters pertinent to the testimony in chief, or may "be extended to matters in issue, is certainly a ques- "tion of State law, as administered in the courts of the "State, and not of Federal law."

Spies vs. Illinois, 123 U. S. 132, page 180.

"No question of repugnancy to the Federal Constitution can be fairly said to arise when the inquiry of the State courts is directed to the sufficiency of an indictment, in the ordinary administration of criminal law and statutes authorizing the form of indictment pursued are not obviously violative of the fundamental principles above adverted to.

"The case before us is destitute of the elements of a Federal question, since there was nothing special, partial or arbitrary, or in violation of fundamental princi-

ples in the law of the State, in accordance with which the indictment was found and as applied in passing upon its sufficiency. The plaintiff in error was not denied the equal protection of the laws, nor deprived of the process due by the law of the land. * * * * * * * * *His objections were, in effect, to the technical sufficiency of the indictment, but not that his rights had been determined by any other rules than those applied to the rest of the community, nor that the Court had done more than commit errors in the disposition of a subject within its jurisdiction.*"

Caldwell vs. Texas, 137 U. S., 692.

II.

The appeal must be dismissed, because the order of Mr. Justice Dallas, from which this appeal was taken, was not a final decision of the Circuit Court of the United States for the District of New Jersey.

An appeal in such cases to the Supreme Court is governed by s. 764, R. S. of U. S., amended, 23 Laws 1885, C. 353, page 437. "From the final decision of such Circuit Court an appeal may be taken to the Supreme Court in cases described in the preceding section."

The order refusing the writ of *habeas corpus* in this case was made by Mr. Justice Dallas, as a judge, and not sitting as a court. On the authority of Casper vs. Fitzgerald, 121 U. S., 87, the appeal must be dismissed.

Concerning counsel's plea for indulgence under this rule, we simply call attention to the fact that he applied to Mr. Justice Garrison for relief on December 22d, to Mr. Chief Justice Beasley on December 24th, but it is not till December 29th that he seeks relief

from the United States Courts. Why, if the Federal Constitution was being so outrageously violated, does he wait a week, when time is so limited, before seeking the assistance of the United States?

III

This Court may, nevertheless, take jurisdiction of the case to ascertain whether the result of the action of the Governor and the rulings of the Supreme Court Justices have been, as alleged, to deprive the appellant of any of the rights, privileges and immunities secured to him by the Constitution and laws of the United States. The only basis for such a contention is furnished by the well known clause of the Fourteenth Amendment to the Constitution of the United States, "nor shall any State deprive any person of life, "liberty or property, without due process of law."

Appellant devotes the last five pages of his brief to a discussion of the meaning of the word "conviction" as employed in the Constitution of the State of New Jersey. He declares that this is a Federal question, within the scope of the Fourteenth Amendment, but in support of this view he cites no other authority than his own opinion. This point is adequately disposed of under Point I of our brief.

The scope and operation of this Amendment, especially the clause relating to "due process of law," as affecting the action of the various departments of State government, has been so thoroughly canvassed in this court of late and its limits so precisely defined that a simple narrative of the facts will show that the State of New Jersey can not be charged with being

about to deprive this man of his life "without due process of law."

It was a most unwarranted act to drag the State of New Jersey into this court under the facts of this case. From the very day when the appellant was apprehended up to the time when this reprieve was granted, he was accorded every possible privilege and right under the Constitution and laws of the State of New Jersey. He was indicted by a Grand Jury, counsel furnished him at the expense of the State, a full, fair and impartial jury trial was given him after the old time-honored fashion of the common law, every Judge in the State to whom he could apply for relief considered his case, but refused relief because there was no error. This very reprieve was granted at his instance to stay the execution of the death sentence so that his case could, as a last resort, be brought before the Court of Pardons. All doubts as to the meaning of the word "conviction" which determined the extent of the Governor's power, were resolved in favor of the condemned man, that he be denied no opportunity to save his life. The Court of Pardons considered the case, but found nothing to justify an interference with the execution of the death sentence. Every Judge to whom he could apply to revise the action of the Governor in granting the reprieve heard his case, and decided that the Governor had not exceeded his power; that there was no error, and that the sentence must stand. If this be not "due process of law," then the State of New Jersey, for years past, has been delinquent to its obligations under the Constitution of the United States, and there is no such thing as "due process of law" within its borders in a criminal case.

While the word "conviction" is an ambiguous term, —4 Am. and Eng. Enc. of Law, page 140, *et seq.*— the interpretation placed upon it, as limiting the power of the Governor to grant a reprieve, is unquestionably correct. To render the power operative in every case, such must be its significance. In this very case, when sentence was pronounced, more than ninety days had passed since the jury found its verdict, but a reprieve is the suspension of a sentence.

"In order to reverse the judgment of the highest "Court of the State of New York (New Jersey) we "should be compelled to hold that it had committed an "error so gross as to amount in law to a denial by the "State of due process of law to one accused of crime or "of some right secured to him by the Constitution of "the United States"—measured by such a standard as this the State of New Jersey, in the present instance, "can not be deemed guilty of a violation of its obli- "gations under the Constitution of the United States."

In Re Kemmler, 136 U. S. 436, pages 447–49.
In Re Converse, 137 U. S. 624, page 631.
Ker vs. Illinois, 119 U. S. 436, page 440.
Hurtando vs. California, 110 U. S. 516.
Caldwell vs. Texas, 137 U. S. 692.
Hallenger vs. Davis, 146 U. S. 314.

Respectfully submitted,

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